the appellant) to give a judgment of the sort it did in 1957. It was, in effect, an order for possession suspended for what might be such an unusually long period as 7 years.

Mr. Smith, again with his usual candour, has admitted that there is no authority for his proposition in the sense that he cannot point to any statement in such terms by a competent judicial authority.

My own view is that not only is his proposition without foundation in principle but that such authority as there is is to the contrary. It seems clear that a court, particularly a court in which is vested the whole judicial power of the State, must necessarily have power to qualify and limit the operation of its judgments in the sort of way the court did in 1957 and support for that view is to be found in the English case of *Jones* v. *Savery* [2] which would appear to be the only reported case which is very much in point. That case, I should observe *in limine*, related to a stable which was premises which were outwith the scope of the United Kingdom Control of Rent Legislation which applies (as we have reminded ourselves so often in this court) only to dwelling houses. To that extent it is on all fours with the present case because, whatever be the truth of the matter, the position now is that by reason of the law of estoppel the appellant-tenant must accept that the premises here are outwith the scope of the Control of Rent Ordinance. And in the case of *Jones* v. *Savery* it was held that a county court judge had power in relation to non-rent-controlled premises to suspend an order for possession for a reasonable time before execution. It seems clear that if a county court, a court which is entirely the creature of statute has such a jurisdiction without being given it in express terms then *a fortiori* the English Supreme Court must have such jurisdiction for the English Court is the Queen's court, the court vested with the judicial power of the British Crown. And in 1957 the position was that the then Supreme Court in Singapore was vested with all the powers and jurisdiction of the Supreme Court in England, powers and jurisdiction which have now passed in part to this court and in part to the present High Court in Singapore.

In the circumstances it is impossible to accede to the argument that the Supreme Court of Singapore (of which the then High Court was a part) had no power to make the order that it did make on 16th July, 1957. If the court had power and if it had jurisdiction to make that order then beyond a peradventure on a clear construction of its wording (though nothing has in fact been argued to the contrary) there was power on an application for leave to enforce it to grant the application.

In my view, Mr. Justice Choor Singh was right and this appeal should be dismissed with costs.

**Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore)** concurred.

*Appeal dismissed.*

Solicitors: *L. A. J. Smith; Allen & Gledhill.*

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## KOH v. KOH

**[O.C.J. (Choor Singh J.) October 17, 1964]**

**[Singapore — Consolidated Suit No. 925 and 1373 of 1963]**

*Husband and wife — Separation deed — Termination — Offer of reconciliation — Whether refusal amounts to desertion — Maintenance — Acceptance of a lesser sum in satisfaction of the whole.*

*Contract — Consideration — Acceptance of lesser sum in satisfaction of larger sum as maintenance.*

The plaintiff sought to recover the sum of $5,141.24 alleged to be due as maintenance under a deed of separation. The defendant pleaded three defences in the alternative: (1) he had made an offer to be reconciled and to resume cohabitation with the wife and as she had refused it, she should be deemed to have deserted him and was therefore not entitled to maintenance; (2) the parties had entered into a new agreement in February 1963 under which the plaintiff was to receive from the clerk of the legislative assembly the monthly allowance of $500 due to the defendant as member of the Singapore Legislative Assembly and this monthly allowance was to be paid to the plaintiff in satisfaction and discharge of the defendant's liabilities under the separation deed; and (3) the payments to be made under the deed had been varied by the new agreement to the extent that the defendant would pay $500 *per mensem* only until such time as his circumstances permitted him to pay $850 *per mensem* as provided in the deed.

**Held:** (1) there was no evidence that the wife had any intention of repudiating the deed of separation or that the husband was putting an end to the deed and as the deed provided for the parties to live separately at all future times, the husband had in the circumstances failed to prove desertion on the part of the plaintiff;

(2) the new arrangement arrived at in February 1963 was an agreement to vary the terms of the separation deed, the variation being that the defendant would henceforth pay the sum of $500 *per mensem* and no more until his financial circumstances permitted him to pay $850 *per mensem* as provided in the deed;

(3) the letter authorising the clerk of the legislative assembly to pay to the plaintiff's solicitors the sum of $500 a month was an independent benefit and the letter therefore constituted a good and valuable consideration for the plaintiff's agreement to accept such payment in lieu of the larger sum she was entitled to under the deed of separation.

*Cases referred to:—*

(1) *Pardy* v. *Pardy* [1939] 3 All E.R. 779.

(2) *Bosley* v. *Bosley* [1958] 2 All E.R. 167.

(3) *Hall* v. *Hall* [1960] 1 All E.R. 91.

(4) *Pinnel's Case* 5 Rep. 117a.

(5) *Foakes* v. *Beer* (1884) 9 App. Cas. 605.

CONSOLIDATED SUITS.

*C. L. Duff* for the plaintiff.

*Freddie Yin* for the defendant.

*Cur. Adv. Vult.*

**Choor Singh J.:** In these consolidated suits the plaintiff, who is the wife of the defendant, seeks to recover the sum of $5,141.24 alleged to be due as maintenance under a deed of separation dated the 20th day of July 1950.

The defendant pleads three defences in the alternative. First, it is alleged that the plaintiff has deserted the defendant without cause since the 23rd April 1960 and therefore is not entitled to any maintenance from that date.

Secondly, it is alleged that in February 1963 the parties entered into a new agreement under which the plaintiff was to receive from the clerk of the legislative assembly the monthly allowance of $500 due to the defendant as a member of the Singapore Legislative Assembly and this monthly allowance was to be paid to the plaintiff in satisfaction and discharge of the defendant's liabilities under the separation deed. The defendant contends that the plaintiff's acceptance of the monthly allowance of $500 put an end to the liability of the defendant to pay maintenance under the separation deed by way of accord and satisfaction.

Thirdly, it is alleged that by the agreement in writing of February 1963 it was agreed that the payments to be made under the deed should be varied to the extent that the defendant would henceforth pay the plaintiff $500 *per mensem* and no more and would authorise the clerk of the Singapore Legislative Assembly to forward to the plaintiff each month the monthly allowance of $500 due to the defendant; and that the defendant would increase the maintenance to the former figure of $850 per month when his circumstances permitted. The defendant contends that under the deed as varied by the written agreement, the plaintiff is only entitled to $500 *per mensem.*

I will first deal with the issue of desertion. It is not disputed that a separation deed was signed by the parties on the 20th July 1950. It provides for maintenance and certain other matters. It recites that "unhappy differences have arisen between the spouses by reason whereof they have agreed to live apart from each other". It contains a covenant that the wife may "at all future times live apart from the husband and free from his control and authority as if she were unmarried".

In April 1960 the defendant communicated with the plaintiff's solicitors and made an offer to be reconciled with his wife and to resume cohabitation as from the 20th April 1960. The plaintiff refused to resume cohabitation. To clarify the reason for her refusal the defendant on the 22nd April 1960 wrote the following letter to his wife's solicitors:

"Dear Duff,

With reference to my offer to be reconciled with my wife, Stella, and to resume cohabitation as from the 20th April 1960 I regret to note from our telephone conversation today that she refuses to be reconciled or to resume cohabitation on the ground that she is so used to living like a *feme sole* she has no intention of changing it for married life at any time.

Please confirm whether I have the correct impression of our telephone conversation.

Yours faithfully,
Sgd. C. H. Koh."

The defendant received the following reply:

23rd April, 1960

"Dear Koh,

Thank you for your letter of the 22nd instant. I confirm that your letter is substantially correct but perhaps the word you have used is not quite appropriate. Your wife did not say that she has no intention of living as a married woman at any time. What she did say was that she has become accustomed to living alone for so many years and she could not at this stage consider returning to you.

Yours sincerely,
Sd. C. L. Duff."

Counsel for the defendant argues that the existence of the separation deed did not prevent the wife's refusal of the husband's offer of reconciliation from constituting desertion. It is said that the husband made a genuine offer of reconciliation and this was refused by the wife without justification; that her sole reason for refusing the offer was that she had become accustomed to living alone for so many years and she could not at that stage consider returning to her husband; and that the wife has been in desertion as from the date of her refusal and consequently is not entitled to any maintenance as from that date.

It is necessary to consider, at this stage, when and under what circumstances an agreement to live separately can become ineffective. In *Pardy* v. *Pardy*,[1] it was held that a separation which begins by being consensual may be changed into desertion without a previous resumption of cohabitation, but it must lose its consensual element on both sides. In *Bosley* v. *Bosley*,[2] the Court of Appeal held that where the agreement to live separately was for an indefinite period it did not prevent the refusal of a genuine offer of reconciliation from constituting desertion. And there the Court of Appeal distinguished *Pardy* v. *Pardy* on the ground that in that case there was a deed of separation in existence which presumably contained the common term that the parties were

convenanting to live apart during their joint lives. Hodson L.J. pointed out that *Pardy* v. *Pardy* and the authorities dealing with separation for joint lives of which there were many had no application to the case before him where there was not such a contract but merely at most an agreement to part for an indefinite period. In *Hall* v. *Hall*,[3] it was held that an agreement to live separately for an indefinite period is terminable on the will of either party immediately or on reasonable notice if the other terms of a particular agreement are such as to lead to the inference that such a term should be implied.

In the present case the agreement of the husband and wife was to live separately "at all future times" and in my view that expression means "for the duration of the joint lives of the husband and wife". The evidence shows that the wife had no intention of repudiating the deed of separation and has not done so at any time. Furthermore, both parties have after the date of the alleged desertion accepted the existence of the deed. There is no evidence that the husband either by his letters or by his subsequent conduct made it clear that he was putting an end to the deed. The husband continued to make payments under the deed after the date of the alleged desertion. There is no evidence that he was doing this merely because he regarded it as his moral duty to provide generously for his wife. In my view he was making those payments because he considered himself to be legally bound by the deed. Counsel for the defendant relied on the decision in *Hall* v. *Hall, supra*. In my opinion the decision in that case has no application to the facts of the present case. On the evidence before me, I hold that the defendant has failed to prove desertion on the part of the plaintiff.

I will now deal with the second and third defences. Both these defences are based on the three letters which appear respectively at pages 16, 17 and 18 of the agreed bundle of documents. In my view these three letters should be considered together with the surrounding circumstances to ascertain the intention of the parties when this correspondence passed between them. The defendant at that time was earning hardly anything from the practice of his profession. His gross takings for the month of January 1963 were $200. He says in one of the letters that he had no savings of any sort and that his law reports had been sold long before that to meet payments due under the separation deed. Under the circumstances, what was his intention when he wrote the two letters dated 11th February and 15th February respectively? In my view his intention was that his wife should waive her claim to all arrears due under the deed as at that date and thereafter accept $500 *per mensem* and no more as maintenance and he was agreeable to the maintenance reverting back to $850 *per mensem* when his circumstances permitted; and if his wife agreed to this, he would authorise the clerk of the Singapore Legislative Assembly to pay direct to her solicitors the sum of $500 *per mensem* which was payable to him as a member of the Singapore Legislative Assembly. In my opinion that was the offer which the defendant made to the plaintiff in the relevant correspondence. With his letter dated 15th February 1963 the defendant forwarded to the plaintiff a letter addressed to the clerk of the Legislative Assembly in the following terms:

"15th February, 1963.

I shall be grateful if you can pay my monthly allowance of $500 directly to Messrs. Donaldson & Burkinshaw (a/c. Mrs. Stella Koh) with effect from this month."

The plaintiff accepted the offer and accordingly she forwarded to the clerk of the Legislative Assembly the letter which was addressed to him. The clerk replied to the defendant as follows:

"23rd February, 1963

Thank you for your letter of 15th February, 1963.

2. Arrangement has been made with the Accountant-General for your special allowance of $500 per month (payable to you as a Member of the Legislative Assembly) to be paid direct to Messrs. Donaldson & Burkinshaw (a/c Mrs. Stella Koh) at the end of each month with effect from the month of February, 1963."

In accordance with the arrangement stated in the clerk's reply, the plaintiff received from the clerk through her solicitors the sum of $500 *per mensem* until the month of September 1963, when she received only $33.33 because the defendant ceased to be a member of the Singapore legislative assembly in that month when the assembly was dissolved. In my view this new agreement arrived at in February 1963 was an agreement to vary the terms of the separation deed, the variation being that the defendant would henceforth pay the sum of $500 *per mensem* and no more until his financial circumstances permitted him to pay $850 *per mensem* as provided in the deed.

Counsel for the plaintiff submits that the agreement of February 1963 is not enforceable and not binding on the plaintiff as the defendant failed to give valuable consideration therefor. I do not accept this submission. In my view there was valuable consideration moving from the defendant. In consideration of the plaintiff agreeing to waive all arrears of maintenance then due under the separation deed and to accept henceforth a sum of $500 *per mensem* and no more until such time as his circumstances permitted him to pay $850 *per mensem*, the defendant gave the plaintiff a written authority, directing the clerk of the legislative assembly to pay to her the sum of $500 *per mensem* which was

payable to the defendant as a member of the legislative assembly. The written authority was a valuable security which ensured payment to the plaintiff of a sum of $500 *per mensem* by a third party.

The doctrine first stated by the Court of Common Pleas in *Pinnel's* case,[4] that "payment of a lesser sum in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the judges, that by no possibility a lesser sum can be a satisfaction to the plaintiff for a greater sum" was affirmed and followed by the House of Lords in *Foakes* v. *Beer*.[5] But the Lord Chancellor, the Earl of Selbrone, in his speech distinguished very clearly the case before him from those cases where the giving of a negotiable paper or something other than a mere money payment constituted new consideration. His Lordship observed:

"All the authorities subsequent to *Cumber* v. *Wane* (1 Sm. L.C. 8th ed. 366), which were relied upon by the appellant at your Lordship's Bar (such as *Sibree* v. *Tripp* (15 M. & W. 23)), *Curlewis* v. *Clark* (3 Ex. 375), have proceeded upon the distinction, that, by giving negotiable paper or otherwise, there had been some new consideration for a new agreement, distinct from mere money payments in or towards discharge of the original liability. I think it unnecessary to go through those cases, or to examine the particular grounds on which each of them was decided. There are no such facts in the case now before your Lordships. What is called "any benefit, or even any legal possibility of benefit," in Mr. Smith's notes to *Cumber* v. *Wane*, is not (as I conceive) that sort of benefit which a creditor may derive from getting payment of part of the money due to him from a debtor who might otherwise keep him at arm's length, or possibly become insolvent, but is some independent benefit, actual or contingent, of a kind which might in law be a good and valuable consideration for any other sort of agreement not under seal...."

In my view the letter authorising the clerk of the legislative assembly to pay to the plaintiff's solicitors the sum of $500 *per mensem* was an independent benefit of the kind envisaged by the Lord Chancellor in *Foakes* v. *Beer*. That letter was in law capable of being a good and valuable consideration.

Counsel for the plaintiff submits that the letter was not valuable consideration because the defendant could have cancelled that letter at any time and stopped payment of the allowance of $500 *per mensem*. In my view there is no substance in this submission. First, the fact is that the defendant did not cancel the letter. Secondly, it is settled law that a debt may be discharged by the acceptance of a cheque for a smaller amount although the drawer of the cheque can and may stop payment on the cheque. For these reasons I hold that the agreement in February 1963 to vary the terms of the separation deed was a valid one and enforceable at law.

There is no evidence before the court that the financial circumstances of the defendant have changed for the better after February 1963 and that he has been since then in a position to pay $850 *per mensem* as provided in the separation deed. The plaintiff is therefore not entitled to recover the sum of $5,141.24 which she alleges is due to her under the original terms of the deed. The plaintiff's alternative claim is for $466.67, being the balance for September 1963. She is entitled to recover this sum. Accordingly there will be judgment for the plaintiff in the sum of $466.67.

*Judgment for the plaintiff.*

Solicitors: *Donaldson & Burkinshaw; L. Rayner.*

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## *RE* LEE GEE CHONG DECEASED; TAY GEOK YAP & ORS. v. TAN LIAN CHEOW

**[F.C. (Wee Chong Jin C.J. (Singapore), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) October 19, 1964]**

*Husband and Wife — Chinese Customary Law — Marriage — Legal requirements for marriage with a t'sip — Consensual marriage — Proof of performance or celebration in accordance with Chinese customs and rites unnecessary — Chinese divorce.*

*Precedent — Decision of Singapore Court of Appeal — Whether binding on Federal Court — Whether decision given per incuriam — Malaysia Act 1963, s. 88(3).*

*Costs — Trustees seeking second opinion — Exceptional circumstances.*

The deceased, a Chinese, died intestate on or about April 25, 1960, domiciled in Singapore. The principal wife, Tay Geok Yap, filed a petition for letters of administration of the deceased's estate and against this petition, Ng Yin Yeok filed a caveat claiming an interest in the estate as lawful widow of the deceased. A deed of agreement was subsequently entered into between the principal wife and Ng Yin Yeok and on the February 20, 1961, the court ordered that the deed of agreement be approved and that letters of administration be granted to Tay Geok Yap and Lee Boon Leong, the deceased's son by her. On October 13, 1961, the respondent, Tan Lian Cheow, claiming to be one of the lawful widows of the deceased filed a notice of motion for revocation of the grant. The matter was ordered to proceed as an action and Ambrose J. held:

(a) to prove a Chinese secondary marriage it is only necessary to prove a common intention to form a permanent union as husband and secondary wife and the formation of the union by the man taking the woman as his secondary wife and the woman taking the man as her husband;

(b) in this case the evidence showed that the deceased and Tan Lian Cheow intended to form a permanent union as husband and secondary wife and that they formed the union in accordance with their intention on December 19, 1957;

(c) the law of Singapore is that a Chinese secondary marriage could be dissolved by the husband by unilaterally repudiating his secondary wife, if she has been disobedient to him or to his principal wife or has been guilty of immoral conduct, and by notifying the dissolution to his near relatives or his clansmen;

(d) in this case the deceased had no grounds for